

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH HOUSTON,

Defendant-Appellant.

UNPUBLISHED

September 18, 2008

No. 279014

Wayne Circuit Court

LC No. 07-005696-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant Joseph Houston appeals as of right his jury trial convictions of three counts of first-degree criminal sexual conduct.¹ The trial court sentenced Houston to three concurrent sentences of 108 months to 270 months' imprisonment. We affirm. We decide this appeal without oral argument.²

I. Basic Facts And Procedural History

Tamara Chapple testified that when she arrived home from work one day in October 2006, one of her nieces told her that Chapple's eight-year-old daughter had been crying all day. When Chapple asked her daughter what was wrong, the girl said that she wanted to talk to her privately, so they went into Chapple's bedroom. Chapple's daughter told her that Houston had been "messaging with [her] private areas." When Chapple asked her daughter what she meant, the girl explained that Houston had been "touching [her] on [her] private area."

Chapple took her daughter to Children's Hospital. Dr. Tonya Touchstone, an emergency medical physician at Children's Hospital, testified that she spoke to Chapple's daughter alone and that she told Dr. Touchstone that Houston had touched her with his hands, as well as his penis. Dr. Touchstone performed a vaginal exam on the girl and testified that the girl had a big bump and a thinning of the tissue in the lower half of the hymen area. Dr. Touchstone testified the abnormalities were indicative that something had been in that area. Dr. Touchstone also

¹ MCL 750.520b(1)(a).

² MCR 7.214(E).

testified that it was possible to have penetration or trauma to the vaginal area without causing a tearing of the hymen. Based on her examination, Dr. Touchstone could not state with 100 percent certainty that the girl had been abused. However, she stated that, based on the physical exam, there was a suspicion of sexual abuse.

After leaving the hospital, Chapple took her daughter to the police station. And a felony complaint was filed against Houston in December 2006.

At the trial in May 2007, Chapple's daughter testified that one time when she was sleeping in the same bed with Houston and his ex-girlfriend, Houston began touching her "privacy." The girl identified her "privacy" as the place where she urinated. She stated that Houston pulled her underwear down. Houston told the girl that if she ever told anyone, he would "whoop" her. The girl also testified that Houston touched her again while she was sleeping in her half-brother's bedroom. She woke up when she felt Houston touch her, and she realized that her shorts had been pulled down and that Houston was touching her "privacy." The girl also testified that another time she was in bed with Houston, her brother, and her half-brother. Houston's ex-girlfriend was not at home. They were all watching television with the lights off when Houston pulled her pants down. The girl stated that Houston was touching her "in her privacy." She stated that Houston touched the inside of her "privacy," where she wiped, with his hand. She testified that she told her mother that Houston had been touching her so that she could get help.

Houston also testified at the trial and denied that he had ever touched Chapple's daughter sexually or inappropriately. Houston also denied that the girl had ever been in the same bed with him and his ex-girlfriend.

The jury convicted Houston of three counts of first-degree criminal sexual conduct. Houston now appeals.

II. Sufficiency Of The Evidence

A. Standard Of Review

Houston argues that there was insufficient evidence that sexual penetration occurred to support a conviction for first-degree criminal sexual conduct. This Court reviews *de novo* a claim of insufficient evidence.³ This Court must review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.⁴

³ *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

⁴ *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

B. Analysis

A person commits first-degree criminal sexual conduct when “he or she engages in sexual penetration with another person and . . . [t]hat other person is under 13 years of age.”⁵ It was undisputed that the complainant was six to eight years old when the conduct took place.

Houston argues that the prosecution failed to establish the necessary element of penetration. Sexual penetration is a necessary element of first-degree criminal sexual conduct.⁶ The Legislature has defined sexual penetration as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however, slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.”⁷

This Court has held that penetration of the labia majora is “beyond the body surface,” it is consistent with the meaning of the definition of sexual penetration.⁸ Therefore, the complainant’s testimony that respondent touched her “privacy,” touched her “in her privacy,” and touched her inside where she wiped herself after urinating was sufficient evidence to support a finding of penetration. In addition, the physician’s testimony that there were abnormalities in the complainant’s hymen area and the complainant’s mother’s testimony that the complainant told her that Houston had “messed” with her private area supported a finding of penetration. Accordingly, when viewing this evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence for a rational trier of fact to find that all the elements of first-degree criminal sexual conduct were proven beyond a reasonable doubt.

III. Admission of Testimony

A. Standard Of Review

Houston argues that the trial court abused its discretion in allowing testimony regarding his nickname over his objections. The decision whether to admit evidence is within the discretion of the trial court, and this Court will not disturb that decision absent a clear abuse of discretion.⁹ An abuse of discretion is found only where the trial court’s decision falls outside the range of principled outcomes.¹⁰

⁵ MCL 750.520b(1)(a).

⁶ *People v Lemons*, 454 Mich 234, 253; 562 NW2d 447 (1997).

⁷ MCL 750.520a(p). We note that MCL 750.520a was amended, effective July 1, 2008, and subsection (p) is now designated as subsection (r). 2007 PA 163. However, this amendment did not change the definition as stated above.

⁸ *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981).

⁹ *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

¹⁰ *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

B. Analysis

At trial, Houston objected to any use of his nickname, “Lie,” arguing that the case was essentially a credibility contest and that he would be denied a fair trial because of the obvious connotation of his nickname. The trial court denied his objection but limited any testimony regarding the nickname to identification purposes.

Evidence of a defendant’s use of an alias is admissible to establish identity.¹¹ In this case, when the complainant told her mother and Dr. Touchstone who had touched her, she told them it was “Lie.” Further, when the complainant identified Houston at trial, she identified him as “Lie.” It was necessary to introduce Houston’s nickname to establish that he was the person about whom the complainant was testifying. Accordingly, we conclude that the trial court did not abuse its discretion in allowing the introduction of Houston’s nickname into evidence for the limited use of identification.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio

¹¹ *People v Phillips*, 217 Mich App 489, 497; 552 NW2d 487(1996).